



April 4, 2003

ENGROSSED SENATE BILL No. 35

DIGEST OF SB 35 (Updated April 2, 2003 10:29 AM - DI 47)

Citations Affected: IC 27-1; IC 34-13.

Synopsis: Increases the cap on damages available from the political subdivision risk management fund. Increases the cap on damages for tort claims against government entities and public employees.

Effective: July 1, 2003.

Meeks R, Simpson

(HOUSE SPONSORS — AVERY, CRAWFORD, ESPICH, YOUNG D)

January 7, 2003, read first time and referred to Committee on Rules and Legislative Procedure.

January 23, 2003, amended; reassigned to Committee on Criminal, Civil and Public Policy.

February 20, 2003, amended, reported favorably — Do Pass.

February 24, 2003, read second time, ordered engrossed. Engrossed.

February 25, 2003, read third time. Yeas 25, nays 24. Failed for lack of a constitutional majority.

February 27, 2003, reread third time, passed. Yeas 28, nays 21.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Appointments and Claims.

April 3, 2003, amended, reported — Do Pass. Recommended to Committee on Ways and Means.

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ES 35—LS 6100/DI 13+



April 4, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 35

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-1-29-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) In order to be
3 eligible for payment under this chapter, a liability of a political
4 subdivision must arise out of a claim based upon an act or omission
5 that takes place while the political subdivision is a member of the fund.
6 (b) The maximum amount payable from the fund for any liability,
7 whether or not it is covered under IC 34-13-3 (or IC 34-4-16.5 before
8 its repeal), is:
9 (1) ~~three hundred thousand dollars (\$300,000)~~ for injury, death,
10 or damage suffered by any one (1) person as a result of the act or
11 omission from which the liability ~~arises; and arises:~~
12 (A) **three hundred thousand dollars (\$300,000) for a cause**
13 **of action that accrues before July 1, 2005;**
14 (B) **five hundred thousand dollars (\$500,000) for a cause of**
15 **action that accrues on or after July 1, 2005 and before July**
16 **1, 2007; or**
17 (C) **seven hundred thousand dollars (\$700,000) for a cause**

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of action that accrues on or after July 1, 2007; and

(2) one million dollars (\$1,000,000) for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises.

(c) No amount may be paid from the fund in respect of punitive damages paid by or assessed against a member of the fund.

(d) No amount may be paid from the fund in the case of a liability based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

(1) is caused by an act or omission of a political subdivision that is a member of the fund; and

(2) occurs as a result of:

(A) a household hazardous waste; or

(B) a conditionally exempt small quantity generator (as described in 40 CFR 261.5(a));

collection, disposal, or recycling project conducted by or controlled by the political subdivision.

(e) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.

(f) The commission may negotiate a structured settlement of any claim.

(g) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

(1) ignitable, as described in 40 CFR 261.21;

(2) corrosive, as described in 40 CFR 261.22;

(3) reactive, as described in 40 CFR 261.23; or

(4) toxic, as described in 40 CFR 261.24.

SECTION 2. IC 34-13-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. **(a)** The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed:

(1) ~~three hundred thousand dollars (\$300,000)~~ for injury to or death of one (1) person in any one (1) occurrence:

(A) ~~three hundred thousand dollars (\$300,000)~~ for a cause



1 of action that accrues before July 1, 2005;
2 (B) five hundred thousand dollars (\$500,000) for a cause of
3 action that accrues on or after July 1, 2005 and before July
4 1, 2007; or
5 (C) seven hundred thousand dollars (\$700,000) for a cause
6 of action that accrues on or after July 1, 2007; and
7 and (2) does not exceed five million dollars (\$5,000,000) for
8 injury to or death of all persons in that occurrence, **five million**
9 **dollars (\$5,000,000).**
10 (b) A governmental entity is not liable for punitive damages.

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SENATE MOTION

Mr. President: I move that Senator Garton be removed as author of Senate Bill 35 and that Senator Meeks R be substituted therefor.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 35, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Criminal, Civil and Public Policy.

(Reference is to SB 35 as introduced.)

GARTON, Chairperson

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 35, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 17, delete "two hundred fifty thousand".

Page 2, line 1, delete "\$1,250,000)" and insert "**(\$1,000,000)**".

Page 2, line 3, reset in roman "one million dollars (\$1,000,000)".

Page 2, line 5, delete ", one million two hundred fifty" and insert ".".

Page 2, delete line 6.

Page 3, line 7, delete "two hundred fifty thousand".

Page 3, line 8, delete "\$1,250,000)" and insert "**(\$1,000,000)**".

and when so amended that said bill do pass.

(Reference is to SB 35 as printed January 24, 2003.)

LONG, Chairperson

Committee Vote: Yeas 11, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Appointments and Claims, to which was referred Senate Bill 35, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 12 through 17, begin a new line double block indented and insert:

"(A) three hundred thousand dollars (\$300,000) for a cause of action that accrues before July 1, 2005;

(B) five hundred thousand dollars (\$500,000) for a cause of action that accrues on or after July 1, 2005 and before July 1, 2007; or

(C) seven hundred thousand dollars (\$700,000) for a cause of action that accrues on or after July 1, 2007; and".

Page 2, delete line 1.

Page 2, delete line 42, begin a new line double block indented and insert:

"(A) three hundred thousand dollars (\$300,000) for a cause of action that accrues before July 1, 2005;

(B) five hundred thousand dollars (\$500,000) for a cause of action that accrues on or after July 1, 2005 and before July 1, 2007; or

(C) seven hundred thousand dollars (\$700,000) for a cause of action that accrues on or after July 1, 2007; and".

Page 3, delete lines 1 through 6.

and when so amended that said bill do pass.

(Reference is to SB 35 as printed February 21, 2003.)

HARRIS, Chair

Committee Vote: yeas 9, nays 3.

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